

SENATE SUBSTITUTE

FOR

HOUSE BILL NO. 331

AN ACT

To repeal sections 67.1830, 67.1836, 67.1838, 67.1842, 392.415, 392.420, and 392.461, RSMo, and to enact in lieu thereof twenty-two new sections relating to telecommunications.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 67.1830, 67.1836, 67.1838, 67.1842,
2 392.415, 392.420, and 392.461, RSMo, are repealed and twenty-two
3 new sections enacted in lieu thereof, to be known as sections
4 67.1830, 67.1836, 67.1838, 67.1842, 67.5090, 67.5092, 67.5094,
5 67.5096, 67.5098, 67.5100, 67.5102, 67.5103, 389.585, 389.586,
6 389.587, 389.588, 389.589, 389.591, 392.415, 392.420, 392.461,
7 and 392.611, to read as follows:

8 67.1830. As used in sections 67.1830 to 67.1846, the
9 following terms shall mean:

10 (1) "Abandoned equipment or facilities", any equipment
11 materials, apparatuses, devices or facilities that are:

12 (a) Declared abandoned by the owner of such equipment or
13 facilities;

14 (b) No longer in active use, physically disconnected from a
15 portion of the operating facility or any other facility that is
16 in use or in service, and no longer capable of being used for the
17 same or similar purpose for which the equipment, apparatuses or
18 facilities were installed; or

1 (c) No longer in active use and the owner of such equipment
2 or facilities fails to respond within thirty days to a written
3 notice sent by a political subdivision;

4 (2) "Degradation", the actual or deemed reduction in the
5 useful life of the public right-of-way resulting from the
6 cutting, excavation or restoration of the public right-of-way;

7 (3) "Emergency", includes but is not limited to the
8 following:

9 (a) An unexpected or unplanned outage, cut, rupture, leak
10 or any other failure of a public utility facility that prevents
11 or significantly jeopardizes the ability of a public utility to
12 provide service to customers;

13 (b) An unexpected or unplanned outage, cut, rupture, leak
14 or any other failure of a public utility facility that results or
15 could result in danger to the public or a material delay or
16 hindrance to the provision of service to the public if the
17 outage, cut, rupture, leak or any other such failure of public
18 utility facilities is not immediately repaired, controlled,
19 stabilized or rectified; or

20 (c) Any occurrence involving a public utility facility that
21 a reasonable person could conclude under the circumstances that
22 immediate and undelayed action by the public utility is necessary
23 and warranted;

24 (4) "Excavation", any act by which earth, asphalt,
25 concrete, sand, gravel, rock or any other material in or on the
26 ground is cut into, dug, uncovered, removed, or otherwise
27 displaced, by means of any tools, equipment or explosives, except
28 that the following shall not be deemed excavation:

1 (a) Any de minimis displacement or movement of ground
2 caused by pedestrian or vehicular traffic;

3 (b) The replacement of utility poles and related equipment
4 at the existing general location that does not involve either a
5 street or sidewalk cut; or

6 (c) Any other activity which does not disturb or displace
7 surface conditions of the earth, asphalt, concrete, sand, gravel,
8 rock or any other material in or on the ground;

9 (5) "Management costs" or "rights-of-way management costs",
10 the actual costs a political subdivision reasonably incurs in
11 managing its public rights-of-way, including such costs, if
12 incurred, as those associated with the following:

13 (a) Issuing, processing and verifying right-of-way permit
14 applications;

15 (b) Inspecting job sites and restoration projects;

16 (c) Protecting or moving public utility right-of-way user
17 construction equipment after reasonable notification to the
18 public utility right-of-way user during public right-of-way work;

19 (d) Determining the adequacy of public right-of-way
20 restoration;

21 (e) Restoring work inadequately performed after providing
22 notice and the opportunity to correct the work; and

23 (f) Revoking right-of-way permits.
24

25 Right-of-way management costs shall be the same for all entities
26 doing similar work. Management costs or rights-of-way management
27 costs shall not include payment by a public utility right-of-way
28 user for the use or rent of the public right-of-way, degradation

1 of the public right-of-way or any costs as outlined in paragraphs
2 (a) to (h) of this subdivision which are incurred by the
3 political subdivision as a result of use by users other than
4 public utilities, the attorneys' fees and cost of litigation
5 relating to the interpretation of this section or section
6 67.1832, or litigation, interpretation or development of any
7 ordinance enacted pursuant to this section or section 67.1832, or
8 attorneys' fees and costs in connection with issuing, processing,
9 or verifying right-of-way permit or other applications or
10 agreements, or the political subdivision's fees and costs related
11 to appeals taken pursuant to section 67.1838. In granting or
12 renewing a franchise for a cable television system, a political
13 subdivision may impose a franchise fee and other terms and
14 conditions permitted by federal law;

15 (6) "Managing the public right-of-way", the actions a
16 political subdivision takes, through reasonable exercise of its
17 police powers, to impose rights, duties and obligations on all
18 users of the right-of-way, including the political subdivision,
19 in a reasonable, competitively neutral and nondiscriminatory and
20 uniform manner, reflecting the distinct engineering,
21 construction, operation, maintenance and public work and safety
22 requirements applicable to the various users of the public right-
23 of-way, provided that such rights, duties and obligations shall
24 not conflict with any federal law or regulation. In managing the
25 public right-of-way, a political subdivision may:

26 (a) Require construction performance bonds or insurance
27 coverage or demonstration of self-insurance at the option of the
28 political subdivision or if the public utility right-of-way user

1 has twenty-five million dollars in net assets and does not have a
2 history of permitting noncompliance within the political
3 subdivision as defined by the political subdivision, then the
4 public utility right-of-way user shall not be required to provide
5 such bonds or insurance;

6 (b) Establish coordination and timing requirements that do
7 not impose a barrier to entry;

8 (c) Require public utility right-of-way users to submit,
9 for right-of-way projects commenced after August 28, 2001,
10 requiring excavation within the public right-of-way, whether
11 initiated by a political subdivision or any public utility right-
12 of-way user, project data in the form maintained by the user and
13 in a reasonable time after receipt of the request based on the
14 amount of data requested;

15 (d) Establish right-of-way permitting requirements for
16 street excavation;

17 (e) Establish removal requirements for abandoned equipment
18 or facilities, if the existence of such facilities prevents or
19 significantly impairs right-of-way use, repair, excavation or
20 construction;

21 (f) Establish permitting requirements for towers and other
22 structures or equipment for wireless communications facilities in
23 the public right-of-way, notwithstanding the provisions of
24 section 67.1832;

25 (g) Establish standards for street restoration in order to
26 lessen the impact of degradation to the public right-of-way; and

27 (h) Impose permit conditions to protect public safety;

28 (7) "Political subdivision", a city, town, village, county

1 of the first classification or county of the second
2 classification;

3 (8) "Public right-of-way", the area on, below or above a
4 public roadway, highway, street or alleyway in which the
5 political subdivision has an ownership interest, but not
6 including:

7 (a) The airwaves above a public right-of-way with regard to
8 cellular or other nonwire telecommunications or broadcast
9 service;

10 (b) Easements obtained by utilities or private easements in
11 platted subdivisions or tracts;

12 (c) Railroad rights-of-way and ground utilized or acquired
13 for railroad facilities; or

14 (d) [Poles,] Pipes, cables, conduits, wires, optical
15 cables, or other means of transmission, collection or exchange of
16 communications, information, substances, data, or electronic or
17 electrical current or impulses utilized by a municipally owned or
18 operated utility pursuant to chapter 91 or pursuant to a charter
19 form of government;

20 (9) "Public utility", every cable television service
21 provider, every pipeline corporation, gas corporation, electrical
22 corporation, rural electric cooperative, telecommunications
23 company, water corporation, heating or refrigerating corporation
24 or sewer corporation under the jurisdiction of the public service
25 commission; every municipally owned or operated utility pursuant
26 to chapter 91 or pursuant to a charter form of government or
27 cooperatively owned or operated utility pursuant to chapter 394;
28 every street light maintenance district; every privately owned

1 utility; and every other entity, regardless of its form of
2 organization or governance, whether for profit or not, which in
3 providing a public utility type of service for members of the
4 general public, utilizes pipes, cables, conduits, wires, optical
5 cables, or other means of transmission, collection or exchange of
6 communications, information, substances, data, or electronic or
7 electrical current or impulses, in the collection, exchange or
8 dissemination of its product or services through the public
9 rights-of-way;

10 (10) "Public utility right-of-way user", a public utility
11 owning or controlling a facility in the public right-of-way; and

12 (11) "Right-of-way permit", a permit issued by a political
13 subdivision authorizing the performance of excavation work in a
14 public right-of-way.

15 67.1836. 1. A political subdivision may deny an
16 application for a right-of-way permit if:

17 (1) The public utility right-of-way user fails to provide
18 all the necessary information requested by the political
19 subdivision for managing the public right-of-way;

20 (2) The public utility right-of-way user has failed to
21 return the public right-of-way to its previous condition under a
22 previous permit;

23 (3) The political subdivision has provided the public
24 utility right-of-way user with a reasonable, competitively
25 neutral, and nondiscriminatory justification for requiring an
26 alternative method for performing the work identified in the
27 permit application or a reasonable alternative route that will
28 result in neither additional installation expense up to ten

1 percent to the public utility right-of-way user nor a declination
2 of service quality;

3 (4) The political subdivision determines that the denial is
4 necessary to protect the public health and safety, provided that
5 the authority of the political subdivision does not extend to
6 those items under the jurisdiction of the public service
7 commission, such denial shall not interfere with a public
8 utility's right of eminent domain of private property, and such
9 denials shall only be imposed on a competitively neutral and
10 nondiscriminatory basis; or

11 (5) The area is environmentally sensitive as defined by
12 state statute or federal law or is a historic district as defined
13 by local ordinance.

14 2. A political subdivision may, after reasonable notice and
15 an opportunity to cure, revoke a right-of-way permit granted to a
16 public utility right-of-way user, with or without fee refund,
17 and/or impose a penalty as established by the political
18 subdivision until the breach is cured, but only in the event of a
19 substantial breach of the terms and material conditions of the
20 permit. A substantial breach by a permittee includes but is not
21 limited to:

22 (1) A material violation of a provision of the right-of-way
23 permit;

24 (2) An evasion or attempt to evade any material provision
25 of the right-of-way permit, or the perpetration or attempt to
26 perpetrate any fraud or deceit upon the political subdivision or
27 its citizens;

28 (3) A material misrepresentation of fact in the right-of-

1 way permit application;

2 (4) A failure to complete work by the date specified in the
3 right-of-way permit, unless a permit extension is obtained or
4 unless the failure to complete the work is due to reasons beyond
5 the permittee's control; and

6 (5) A failure to correct, within the time specified by the
7 political subdivision, work that does not conform to applicable
8 national safety codes, industry construction standards, or local
9 safety codes that are no more stringent than national safety
10 codes, upon inspection and notification by the political
11 subdivision of the faulty condition.

12 3. Any political subdivision that requires public utility
13 right-of-way users to obtain a right-of-way permit, except in an
14 emergency, prior to performing excavation work within a public
15 right-of-way shall promptly, but not longer than thirty-one days,
16 process all completed permit applications. If a political
17 subdivision fails to act on an application for a right-of-way
18 permit within thirty-one days, the application shall be deemed
19 approved. In order to avoid excessive processing and accounting
20 costs to either the political subdivision or the public utility
21 right-of-way user, the political subdivision may establish
22 procedures for bulk processing of permits and periodic payment of
23 permit fees.

24 67.1838. [1.] A public utility right-of-way user that has
25 been denied a right-of-way permit, has had its right-of-way
26 permit revoked, believes that the fees imposed on the public
27 right-of-way user by the political subdivision do not conform to
28 the requirements of section 67.1840, believes the political

1 subdivision has violated any provision of sections 67.1830 to
2 67.1848, or asserts any other issues related to the use of the
3 public right-of-way, [shall have, upon written request, such
4 denials, revocations, fee impositions, or other disputes reviewed
5 by the governing body of the political subdivision or an entity
6 assigned by the governing body for this purpose. The governing
7 body of the political subdivision or its delegated entity shall
8 specify, in its permit processing schedules, the maximum number
9 of days by which the review request shall be filed in order to be
10 reviewed by the governing body of the political subdivision or
11 its delegated entity. A decision affirming the denial,
12 revocation, fee imposition or dispute resolution shall be in
13 writing and supported by written findings establishing the
14 reasonableness of the decision.

15 2. Upon affirmation by the governing body of the denial,
16 revocation, fee imposition or dispute resolution, the public
17 utility right-of-way user may, in addition to all other remedies
18 and if both parties agree, have the right to have the matter
19 resolved by mediation or binding arbitration. Binding
20 arbitration shall be before an arbitrator agreed to by both the
21 political subdivision and the public utility right-of-way user.
22 The costs and fees of a single arbitrator shall be borne equally
23 by the political subdivision and the public utility right-of-way
24 user.

25 3. If the parties cannot agree on an arbitrator, the matter
26 shall be resolved by a three-person arbitration panel consisting
27 of one arbitrator selected by the political subdivision, one
28 arbitrator selected by the public utility right-of-way user, and

1 one person selected by the other two arbitrators. In the event
2 that a three-person arbitrator panel is necessary, each party
3 shall bear the expense of its own arbitrator and shall jointly
4 and equally bear with the other party the expense of the third
5 arbitrator and of the arbitration.

6 4. Each party to the arbitration shall pay its own costs,
7 disbursements and attorney fees] may bring an action for review
8 in any court of competent jurisdiction. The court shall rule on
9 any such petition for review in an expedited manner by moving the
10 petition to the head of the docket. Nothing shall deny the
11 authority of its right to a hearing before the court.

12 67.1842. 1. In managing the public right-of-way and in
13 imposing fees pursuant to sections 67.1830 to 67.1846, no
14 political subdivision shall:

15 (1) Unlawfully discriminate among public utility right-of-
16 way users;

17 (2) Grant a preference to any public utility right-of-way
18 user;

19 (3) Create or erect any unreasonable requirement for entry
20 to the public right-of-way by public utility right-of-way users;

21 (4) Require a telecommunications company to obtain a
22 franchise or require a public utility right-of-way user to pay
23 for the use of the public right-of-way, except as provided in
24 sections 67.1830 to 67.1846; [or]

25 (5) Enter into a contract or any other agreement for
26 providing for an exclusive use, occupancy or access to any public
27 right-of-way; or

28 (6) Require any public utility that has legally been

1 granted access to the political subdivision's right-of-way prior
2 to August 28, 2001, to enter into an agreement or obtain a permit
3 for general access to or the right to remain in the right-of-way
4 of the political subdivision.

5 2. A public utility right-of-way user shall not be required
6 to apply for or obtain right-of-way permits for projects
7 commenced prior to August 28, 2001, requiring excavation within
8 the public right-of-way, for which the user has obtained the
9 required consent of the political subdivision, or that are
10 otherwise lawfully occupying or performing work within the public
11 right-of-way. The public utility right-of-way user may be
12 required to obtain right-of-way permits prior to any excavation
13 work performed within the public right-of-way after August 28,
14 2001.

15 3. A political subdivision shall not collect a fee imposed
16 pursuant to section 67.1840 through the provision of in-kind
17 services by a public utility right-of-way user, nor require the
18 provision of in-kind services as a condition of consent to use
19 the political subdivision's public right-of-way; however, nothing
20 in this subsection shall preclude requiring services of a cable
21 television operator, open video system provider or other video
22 programming provider as permitted by federal law.

23 67.5090. Sections 67.5090 to 67.5102 shall be known and may
24 be cited as the "Uniform Wireless Communications Infrastructure
25 Deployment Act" and is intended to encourage and streamline the
26 deployment of broadband facilities and to help ensure that robust
27 wireless communication services are available throughout
28 Missouri.

67.5092. As used in sections 67.5090 to 67.5102, the following terms mean:

(1) "Accessory equipment", any equipment serving or being used in conjunction with a wireless facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or similar structures;

(2) "Antenna", communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services;

(3) "Applicant", any person engaged in the business of providing wireless communications services or the wireless communications infrastructure required for wireless communications services who submits an application;

(4) "Application", a request submitted by an applicant to an authority to construct a new wireless support structure, for the substantial modification of a wireless support structure, or for collocation of a wireless facility or replacement of a wireless facility on an existing structure;

(5) "Authority", each state, county, and municipal governing body, board, agency, office, or commission authorized by law and acting in its capacity to make legislative, quasi-judicial, or administrative decisions relative to zoning or building permit review of an application. The term shall not include state courts having jurisdiction over land use, planning, or zoning decisions made by an authority;

(6) "Base station", a station at a specific site authorized

1 to communicate with mobile stations, generally consisting of
2 radio transceivers, antennas, coaxial cables, power supplies, and
3 other associated electronics, and includes a structure that
4 currently supports or houses an antenna, a transceiver, coaxial
5 cables, power supplies, or other associated equipment;

6 (7) "Building permit", a permit issued by an authority
7 prior to commencement of work on the collocation of wireless
8 facilities on an existing structure, the substantial modification
9 of a wireless support structure, or the commencement of
10 construction of any new wireless support structure, solely to
11 ensure that the work to be performed by the applicant satisfies
12 the applicable building code;

13 (8) "Collocation", the placement or installation of a new
14 wireless facility on existing structure, including electrical
15 transmission towers, water towers, buildings, and other
16 structures capable of structurally supporting the attachment of
17 wireless facilities in compliance with applicable codes;

18 (9) "Electrical transmission tower", an electrical
19 transmission structure used to support high voltage overhead
20 power lines. The term shall not include any utility pole;

21 (10) "Equipment compound", an area surrounding or near a
22 wireless support structure within which are located wireless
23 facilities;

24 (11) "Existing structure", a structure that exists at the
25 time a request to place wireless facilities on a structure is
26 filed with an authority. The term includes any structure that is
27 capable of supporting the attachment of wireless facilities in
28 compliance with applicable building codes, National Electric

Safety Codes, and recognized industry standards for structural safety, capacity, reliability, and engineering, including, but not limited to, towers, buildings, and water towers. The term shall not include any utility pole;

(12) "Replacement", includes constructing a new wireless support structure of equal proportions and of equal height or such other height that would not constitute a substantial modification to an existing structure in order to support wireless facilities or to accommodate collocation and includes the associated removal of the pre-existing wireless facilities or wireless support structure;

(13) "Substantial modification", the mounting of a proposed wireless facility on a wireless support structure which, as applied to the structure as it was originally constructed:

(a) Increases the existing vertical height of the structure by:

a. More than ten percent; or

b. The height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; or

(b) Involves adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure more than twenty feet or more than the width of the wireless support structure at the level of the appurtenance, whichever is greater (except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable);

(c) Involves the installation of more than the standard

number of new outdoor equipment cabinets for the technology involved, not to exceed four new equipment cabinets; or

(d) Increases the square footage of the existing equipment compound by more than two thousand five hundred square feet;

(14) "Utility", any person, corporation, county, municipality acting in its capacity as a utility, municipal utility board, or other entity, or department thereof or entity related thereto, providing retail or wholesale electric, natural gas, water, waste water, data, cable television, or telecommunications or internet protocol-related services;

(15) "Utility pole", a structure owned or operated by a utility that is designed specifically for and used to carry lines, cables, or wires for telephony, cable television, or electricity, or to provide lighting;

(16) "Water tower", a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water;

(17) "Wireless facility", the set of equipment and network components, exclusive of the underlying wireless support structure, including, but not limited to, antennas, accessory equipment, transmitters, receivers, power supplies, cabling and associated equipment necessary to provide wireless communications services;

(18) "Wireless support structure", a structure, such as a monopole, tower, or building capable of supporting wireless facilities. This definition does not include utility poles.

67.5094. In order to ensure uniformity across the state of

1 Missouri with respect to the consideration of every application,
2 an authority shall not:

3 (1) Require an applicant to submit information about, or
4 evaluate an applicant's business decisions with respect to its
5 designed service, customer demand for service, or quality of its
6 service to or from a particular area or site;

7 (2) Evaluate an application based on the availability of
8 other potential locations for the placement of wireless support
9 structures or wireless facilities, including without limitation
10 the option to collocate instead of construct a new wireless
11 support structure or for substantial modifications of a support
12 structure, or vice versa; provided, however, that solely with
13 respect to an application for a new wireless support structure,
14 an authority may require an applicant to state in its application
15 that it conducted an analysis of available collocation
16 opportunities on existing wireless towers within the same search
17 ring defined by the applicant, solely for the purpose of
18 confirming that an applicant undertook such an analysis;

19 (3) Dictate the type of wireless facilities, infrastructure
20 or technology to be used by the applicant, including, but not
21 limited to, requiring an applicant to construct a distributed
22 antenna system in lieu of constructing a new wireless support
23 structure;

24 (4) Require the removal of existing wireless support
25 structures or wireless facilities, wherever located, as a
26 condition for approval of an application;

27 (5) With respect to radio frequency emissions, impose
28 environmental testing, sampling, or monitoring requirements or

other compliance measures on wireless facilities that are categorically excluded under the Federal Communication Commission's rules for radio frequency emissions under 47 CFR 1.1307(b) (1) or other applicable federal law, as the same may be amended or supplemented;

(6) Establish or enforce regulations or procedures for RF signal strength or the adequacy of service quality;

(7) In conformance with 47 U.S.C. Section 332(c) (7) (b) (4), reject an application, in whole or in part, based on perceived or alleged environmental effects of radio frequency emissions;

(8) Impose any restrictions with respect to objects in navigable airspace that are greater than or in conflict with the restrictions imposed by the Federal Aviation Administration;

(9) Prohibit the placement of emergency power systems that comply with federal and state environmental requirements;

(10) Charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application that is not required for similar types of commercial development within the authority's jurisdiction. Fees imposed by an authority for or directly by a third-party entity providing review or technical consultation to the authority must be based on actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. Except when mutually agreeable to the applicant and the authority, total charges and fees shall not exceed five hundred dollars for a collocation application or one thousand five hundred dollars for an application for a new wireless support structure or for a substantial modification of a

1 wireless support structure. Notwithstanding the foregoing, in no
2 event shall an authority or any third party entity include within
3 its charges any travel expenses incurred in a third-party's
4 review of an application and in no event shall an applicant be
5 required to pay or reimburse an authority for consultation or
6 other third-party fees based on a contingency or result-based
7 arrangement;

8 (11) Impose surety requirements, including bonds, escrow
9 deposits, letters of credit, or any other type of financial
10 surety, to ensure that abandoned or unused facilities can be
11 removed unless the authority imposes similar requirements on
12 other permits for other types of commercial development or land
13 uses;

14 (12) Condition the approval of an application on the
15 applicant's agreement to provide space on or near the wireless
16 support structure for authority or local governmental services at
17 less than the market rate for space or to provide other services
18 via the structure or facilities at less than the market rate for
19 such services;

20 (13) Limit the duration of the approval of an application;

21 (14) Discriminate or create a preference on the basis of
22 the ownership, including ownership by the authority, of any
23 property, structure, or tower when promulgating rules or
24 procedures for siting wireless facilities or for evaluating
25 applications;

26 (15) Impose any requirements or obligations regarding the
27 presentation or appearance of facilities, including, but not
28 limited to, those relating to the kind or type of materials used

1 and those relating to arranging, screening, or landscaping of
2 facilities if such regulations or obligations are unreasonable;

3 (16) Impose any requirements that an applicant purchase,
4 subscribe to, use, or employ facilities, networks, or services
5 owned, provided, or operated by an authority, in whole or in
6 part, or by any entity in which an authority has a competitive,
7 economic, financial, governance, or other interest;

8 (17) Condition the approval of an application on, or
9 otherwise require, the applicant's agreement to indemnify or
10 insure the authority in connection with the authority's exercise
11 of its police power-based regulations; or

12 (18) Condition or require the approval of an application
13 based on the applicant's agreement to permit any wireless
14 facilities provided or operated, in whole or in part, by an
15 authority or by any entity in which an authority has a
16 competitive, economic, financial, governance, or other interest,
17 to be placed at or collocated with the applicant's wireless
18 support structure.

19 67.5096. 1. Authorities may continue to exercise zoning,
20 land use, planning, and permitting authority within their
21 territorial boundaries with regard to the siting of new wireless
22 support structures, subject to the provisions of sections 67.5090
23 to 67.5103, including without limitation section 67.5094, and
24 subject to federal law.

25 2. Any applicant that proposes to construct a new wireless
26 support structure within the jurisdiction of any authority,
27 planning or otherwise, that has adopted planning and zoning
28 regulations in accordance with sections 67.5090 to 67.5103 shall:

1 (1) Submit the necessary copies and attachments of the
2 application to the appropriate authority. Each application shall
3 include a copy of a lease, letter of authorization or other
4 agreement from the property owner evidencing applicant's right to
5 pursue the application; and

6 (2) Comply with applicable local ordinances concerning land
7 use and the appropriate permitting processes.

8 3. Disclosure of records in the possession or custody of
9 authority personnel, including but not limited to documents and
10 electronic data, shall be subject to chapter 610.

11 4. The authority, within one hundred twenty calendar days
12 of receiving an application to construct a new wireless support
13 structure or within such additional time as may be mutually
14 agreed to by an applicant and an authority, shall:

15 (1) Review the application in light of its conformity with
16 applicable local zoning regulations. An application is deemed to
17 be complete unless the authority notifies the applicant in
18 writing, within thirty calendar days of submission of the
19 application, of the specific deficiencies in the application
20 which, if cured, would make the application complete. Upon
21 receipt of a timely written notice that an application is
22 deficient, an applicant may take thirty calendar days from
23 receiving such notice to cure the specific deficiencies. If the
24 applicant cures the deficiencies within thirty calendar days, the
25 application shall be reviewed and processed within one hundred
26 twenty calendar days from the initial date the application was
27 received. If the applicant requires a period of time beyond
28 thirty calendar days to cure the specific deficiencies, the one

1 hundred twenty calendar days deadline for review shall be
2 extended by the same period of time;

3 (2) Make its final decision to approve or disapprove the
4 application; and

5 (3) Advise the applicant in writing of its final decision.

6 5. If the authority fails to act on an application to
7 construct a new wireless support structure within the one hundred
8 twenty calendar days review period specified under subsection 4
9 of this section or within such additional time as may be mutually
10 agreed to by an applicant and an authority, the application shall
11 be deemed approved.

12 6. A party aggrieved by the final action of an authority,
13 either by its affirmatively denying an application under the
14 provisions of this section or by its inaction, may bring an
15 action for review in any court of competent jurisdiction.

16 67.5098. 1. Authorities may continue to exercise zoning,
17 land use, planning, and permitting authority within their
18 territorial boundaries with regard to applications for
19 substantial modifications of wireless support structures, subject
20 to the provisions of sections 67.5090 to 67.5103, including
21 without limitation section 67.5094, and subject to federal law.

22 2. Any applicant that applies for a substantial
23 modification of a wireless support structure within the
24 jurisdiction of any authority, planning or otherwise, that has
25 adopted planning and zoning regulations in accordance with
26 sections 67.5090 to 67.5103 shall:

27 (1) Submit the necessary copies and attachments of the
28 application to the appropriate authority. Each application shall

1 include a copy of a lease, letter of authorization or other
2 agreement from the property owner evidencing applicant's right to
3 pursue the application; and

4 (2) Comply with applicable local ordinances concerning land
5 use and the appropriate permitting processes.

6 3. Disclosure of records in the possession or custody of
7 authority personnel, including but not limited to documents and
8 electronic data, shall be subject to chapter 610.

9 4. The authority, within ninety calendar days of receiving
10 an application for a substantial modification of wireless support
11 structures, shall:

12 (1) Review the application in light of its conformity with
13 applicable local zoning regulations. An application is deemed to
14 be complete unless the authority notifies the applicant in
15 writing, within thirty calendar days of submission of the
16 application, of the specific deficiencies in the application
17 which, if cured, would make the application complete. Upon
18 receipt of a timely written notice that an application is
19 deficient, an applicant may take thirty calendar days from
20 receiving such notice to cure the specific deficiencies. If the
21 applicant cures the deficiencies within thirty calendar days, the
22 application shall be reviewed and processed within ninety
23 calendar days from the initial date the application was received.
24 If the applicant requires a period of time beyond thirty calendar
25 days to cure the specific deficiencies, the ninety calendar days
26 deadline for review shall be extended by the same period of time;

27 (2) Make its final decision to approve or disapprove the
28 application; and

1 (3) Advise the applicant in writing of its final decision.

2 5. If the authority fails to act on an application for a
3 substantial modification within the ninety calendar days review
4 period specified under subsection 4 of this section, or within
5 such additional time as may be mutually agreed to by an applicant
6 and an authority, the application for a substantial modification
7 shall be deemed approved.

8 6. A party aggrieved by the final action of an authority,
9 either by its affirmatively denying an application under the
10 provisions of this section or by its inaction, may bring an
11 action for review in any court of competent jurisdiction.

12 67.5100. 1. Subject to the provisions of sections 67.5090
13 to 67.5103, including section 67.5094, collocation applications
14 and applications for replacement of wireless facilities shall be
15 reviewed for conformance with applicable building permit
16 requirements, National Electric Safety Codes, and recognized
17 industry standards for structural safety, capacity, reliability,
18 and engineering, but shall not otherwise be subject to zoning or
19 land use requirements, including design or placement
20 requirements, or public hearing review.

21 2. The authority, within forty-five calendar days of
22 receiving a collocation application or application for
23 replacement of wireless facilities, shall:

24 (1) Review the collocation application or application to
25 replace wireless facilities in light of its conformity with
26 applicable building permit requirements and consistency with
27 sections 67.5090 to 67.5103. A collocation application or
28 application to replace wireless facilities is deemed to be

1 complete unless the authority notifies the applicant in writing,
2 within fifteen calendar days of submission of the application, of
3 the specific deficiencies in the application which, if cured,
4 would make the application complete. Each collocation
5 application or application to replace wireless facilities shall
6 include a copy of a lease, letter of authorization or other
7 agreement from the property owner evidencing applicant's right to
8 pursue the application. Upon receipt of a timely written notice
9 that a collocation application or application to replace wireless
10 facilities is deficient, an applicant may take fifteen calendar
11 days from receiving such notice to cure the specific
12 deficiencies. If the applicant cures the deficiencies within
13 fifteen calendar days, the application shall be reviewed and
14 processed within forty-five calendar days from the initial date
15 the application was received. If the applicant requires a period
16 of time beyond fifteen calendar days to cure the specific
17 deficiencies, the forty-five calendar days deadline for review
18 shall be extended by the same period of time;

19 (2) Make its final decision to approve or disapprove the
20 collocation application or application for replacement of
21 wireless facilities; and

22 (3) Advise the applicant in writing of its final decision.

23 3. If the authority fails to act on a collocation
24 application or application to replace wireless facilities within
25 the forty-five calendar days review period specified in
26 subsection 2 of this section, the application shall be deemed
27 approved.

28 4. The provisions of sections 67.5090 to 67.5103 shall not:

1 (1) Authorize an authority, except when acting solely in
2 its capacity as a utility, to mandate, require, or regulate the
3 placement, modification, or collocation of any new wireless
4 facility on new, existing, or replacement poles owned or operated
5 by a utility;

6 (2) Expand the power of an authority to regulate any
7 utility; or

8 (3) Restrict any utility's rights or authority, or negate
9 any utility's agreement, regarding requested access to, or the
10 rates and terms applicable to placement of any wireless facility
11 on new, existing, or replacement poles, structures, or existing
12 structures owned or operated by a utility.

13 5. A party aggrieved by the final action of an authority,
14 either by its affirmatively denying an application under the
15 provisions of this section or by its inaction, may bring an
16 action for review in any court of competent jurisdiction.

17 67.5102. In accordance with the policies of this state to
18 further the deployment of wireless communications infrastructure:

19 (1) An authority may not institute any moratorium on the
20 permitting, construction, or issuance of approval of new wireless
21 support structures, substantial modifications of wireless support
22 structures, or collocations if such moratorium exceeds six months
23 in length and if the legislative act establishing it fails to
24 state reasonable grounds and good cause for such moratorium. No
25 such moratorium shall affect an already pending application;

26 (2) To encourage applicants to request construction of new
27 wireless support structures on public lands and to increase local
28 revenues:

1 (a) An authority may not charge a wireless service provider
2 or wireless infrastructure provider any rental, license, or other
3 fee to locate a wireless support structure on an authority's
4 property in excess of the current market rates for rental or use
5 of similarly situated property. If the applicant and the
6 authority do not agree on the applicable market rate for any such
7 public land and cannot agree on a process by which to derive the
8 applicable market rate for any such public land, then the market
9 rate will be determined by a panel of three certified appraisers
10 licensed under chapter 339, using the following process. Each
11 party will appoint one certified appraiser to the panel, and the
12 two certified appraisers so appointed will appoint a third
13 certified appraiser. Each appraiser will independently appraise
14 the appropriate lease rate, and the market rate shall be set at
15 the mid-point between the highest and lowest market rates among
16 the three independent appraisals, provided the mid-point between
17 the highest and lowest appraisals is greater than or less than
18 ten percent of the appraisal of the third appraiser chosen by the
19 parties' appointed appraisers. In such case, the third appraisal
20 will determine the rate for the lease. The appraisal process
21 shall be concluded within ninety calendar days from the date the
22 applicant first tenders its proposed lease rate to the authority.
23 Each party will bear the cost of its own appointed appraiser, and
24 the parties shall share equally the cost of the third appraiser
25 chosen by the two appointed appraisers. Nothing in this
26 paragraph shall bar an applicant and an authority from agreeing
27 to reasonable, periodic reviews and adjustments of current market
28 rates during the term of a lease or contract to use an

1 authority's property; and

2 (b) An authority may not offer a lease or contract to use
3 public lands to locate a wireless support structure on an
4 authority's property that is less than fifteen years in duration
5 unless the applicant agrees to accept a lease or contract of less
6 than fifteen years in duration;

7 (3) Nothing in subsection 2 of this section is intended to
8 limit an authority's lawful exercise of zoning, land use, or
9 planning and permitting authority with respect to applications
10 for new wireless support structures on an authority's property
11 under subsection 1 of section 67.5096.

12 67.5103. Notwithstanding any provision of sections 67.5090
13 to 67.5102, nothing herein shall provide any applicant the power
14 of eminent domain or the right to compel any private or public
15 property owner, or the department of conservation or department
16 of natural resources to:

17 (1) Lease or sell property for the construction of a new
18 wireless support structure; or

19 (2) Locate or cause the collocation or expansion of a
20 wireless facility on any existing structure or wireless support
21 structure.

22 389.585. 1. As used in sections 389.585 to 389.591, the
23 following terms mean:

24 (1) "Crossing", the construction, operation, repair, or
25 maintenance of a facility over, under, or across a railroad
26 right-of-way by a utility when the right-of-way is owned by a
27 land management company and not a railroad or railroad
28 corporation;

1 (2) "Direct expenses", includes, but is not limited to, any
2 or all of the following:

3 (a) The cost of inspecting and monitoring the crossing
4 site;

5 (b) Administrative and engineering costs for review of
6 specifications and for entering a crossing on the railroad's
7 books, maps, and property records and other reasonable
8 administrative and engineering costs incurred as a result of the
9 crossing;

10 (c) Document and preparation fees associated with a
11 crossing and any engineering specifications related to the
12 crossing;

13 (d) Damages assessed in connection with the rights granted
14 to a utility with respect to a crossing;

15 (3) "Facility", any cable, conduit, wire, pipe, casing
16 pipe, supporting poles and guys, manhole, or other material or
17 equipment that is used by a utility to furnish any of the
18 following:

19 (a) Communications, communications-related, wireless
20 communications, video, or information services;

21 (b) Electricity;

22 (c) Gas by piped system;

23 (d) Petroleum or petroleum products by piped system;

24 (e) Sanitary and storm sewer service;

25 (f) Water by piped system;

26 (4) "Land management company", an entity that owns, leases,
27 holds by easement, holds by adverse possession or otherwise
28 possesses a corridor which is used for rail transportation

1 purposes and is not a railroad or railroad corporation;

2 (5) "Land management corridor", includes one or more of the
3 following:

4 (a) A right-of-way or other interest in real estate that is
5 owned, leased, held by easement, held by adverse possession or
6 otherwise possessed by a land management company and not a
7 railroad or railroad corporation; and which is used for rail
8 transportation purposes. "Land management corridor" does not
9 include yards, terminals or stations. "Land management corridor"
10 also does not include railroad tracks or lines which have been
11 legally abandoned;

12 (b) Any other interest in a right-of-way formerly owned by
13 a railroad or railroad corporation that has been acquired by a
14 land management company or similar entity and which is used for
15 rail transportation purposes;

16 (6) "Notice", a written description of the proposed
17 project. Such notice shall include, at a minimum: a description
18 of the proposed crossing including blueprints or plats, print
19 copies of the engineering specifications for the crossing, a
20 proposed time line for the commencement and completion of work at
21 the crossing, a narrative description of the work to be performed
22 at the crossing, proof of insurance for the work to be done and
23 other reasonable requirements necessary for the processing of an
24 application;

25 (7) "Railroad" or "railroad corporation", a railroad
26 corporation organized and operating under chapter 388, or any
27 other corporation, trustees of a railroad corporation, company,
28 affiliate, association, joint stock association or company, firm,

1 partnership, or individual, which is an owner, operator,
2 occupant, lessee, manager, or railroad right-of-way agent acting
3 on behalf of a railroad or railroad corporation;

4 (8) "Railroad right-of-way", includes one or more of the
5 following:

6 (a) A right-of-way or other interest in real estate that is
7 owned or operated by a land management company and not a railroad
8 or railroad corporation;

9 (b) Any other interest in a former railroad right-of-way
10 that has been acquired or is operated by a land management
11 company or similar entity;

12 (9) "Special circumstances", includes either or both of the
13 following:

14 (a) The characteristics of a segment of a railroad
15 right-of-way not found in a typical segment of a railroad
16 right-of-way that enhance the value or increase the damages or
17 the engineering or construction expenses for the land management
18 company associated with a proposed crossing, or to the current or
19 reasonably anticipated use by a land management company of the
20 railroad right-of-way, necessitating additional terms and
21 conditions or compensation associated with a crossing;

22 (b) Variances from the standard specifications requested by
23 the land management company;

24 "Special circumstances" may include, but is not limited to, the
25 railroad right-of-way segment's relationship to other property,
26 location in urban or other developed areas, the existence of
27 unique topography or natural resources, or other characteristics
28 or dangers inherent in the particular crossing or segment of the

1 railroad right-of-way;

2 (10) "Telecommunications service", the transmission of
3 information by wire, radio, optical cable, electronic impulses,
4 or other similar means. As used in this definition,
5 "information" means knowledge or intelligence represented by any
6 form of writing, signs, signals, pictures, sounds, or any other
7 symbols;

8 (11) "Utility", shall include:

9 (a) Any public utility subject to the jurisdiction of the
10 public service commission;

11 (b) Providers of telecommunications service, wireless
12 communications, or other communications-related service;

13 (c) Any electrical corporation which is required by its
14 bylaws to operate on the not-for-profit cooperative business
15 plan, with its consumers who receive service as the stockholders
16 of such corporation, and which holds a certificate of public
17 convenience and necessity to serve a majority of its customer-
18 owners in counties of the third classification as of August 28,
19 2003;

20 (d) Any rural electric cooperative, and

21 (e) Any municipally owned utility.

22 389.586. 1. After the land management company receives a
23 copy of the notice from the utility, the land management company
24 shall send a complete copy of that notice, by certified mail or
25 by private delivery service which requires a return receipt, to
26 the railroad or railroad corporation within two business days.

27 No utility may commence a crossing until the railroad or railroad
28 corporation has approved the crossing. The railroad or railroad

1 corporation shall have thirty days from the receipt of the
2 notice, to review and approve or reject the proposed crossing.
3 The railroad or railroad corporation shall reject a proposed
4 crossing only if special circumstances exist. If the railroad or
5 railroad corporation rejects a proposed crossing, the utility may
6 submit an amended proposal for a crossing. The railroad or
7 railroad corporation shall have an additional thirty days from
8 receipt of the amended proposal to review and approve or reject
9 the amended crossing proposal. The railroad or railroad
10 corporation shall not unreasonably withhold approval. Once the
11 railroad or railroad corporation grants such approval, and upon
12 payment of the fee and any other payments authorized pursuant to
13 sections 389.586 or 389.587, the utility shall be deemed to have
14 authorization to commence the crossing activity. The utility
15 shall provide the railroad or railroad corporation with written
16 notification of the commencement of the crossing activity before
17 beginning such activity.

18 2. The land management company and the utility shall
19 maintain and repair its own property within the land management
20 corridor and each shall bear responsibility for its own acts and
21 omissions, except that the utility shall be responsible for any
22 bodily injury or property damage arising from the installation,
23 maintenance, repair and its use of the crossing. The railroad or
24 railroad corporation may require the utility and the land
25 management company to obtain reasonable amounts of comprehensive
26 general liability insurance and railroad protective liability
27 insurance coverage for a crossing, and that this insurance
28 coverage name the railroad or railroad corporation as an insured.

1 Further, the land management company and the utility shall
2 provide the railroad or railroad corporation with proof that they
3 have liability insurance coverage which meets such requirements,
4 if any.

5 3. A utility shall have immediate access to a crossing for
6 repair and maintenance of existing facilities in case of an
7 immediate threat to life and upon notification to the applicable
8 railroad or railroad corporation. Before commencing any such
9 work, the utility must first contact the railroad or railroad
10 corporation's dispatch center, command center or other facility
11 which is designated to receive emergency communications.

12 4. The utility shall be provided a crossing, absent a
13 claim of special circumstances, after payment by the utility of
14 the standard crossing fee, submission of completed engineering
15 specifications to the land management company, and approval of
16 the crossing by the railroad or railroad corporation. The
17 engineering specifications shall comply with the clearance
18 requirements as established by the National Electrical Safety
19 Code, the American Railway Engineering and Maintenance of Way
20 Association and the standards of the applicable railroad or
21 railroad corporation which are in effect and which apply to
22 conditions at a particular crossing. The land management company
23 and utility shall further be responsible for any modifications,
24 upgrades or other changes which may be needed to comply with
25 changes in said standards.

26 5. The utility, the railroad or railroad corporation, and
27 the land management company shall agree to such other terms and
28 conditions as may be necessary to provide for reasonable use of a

1 land management corridor by a utility.

2 389.587. Unless otherwise agreed by the parties and subject
3 to section 389.588, a utility that locates its facilities within
4 the railroad right-of-way for a crossing, other than a crossing
5 along a state highway or other public road, shall pay the land
6 management company a one-time standard crossing fee of one
7 thousand five hundred dollars for each crossing plus the costs
8 associated with modifications to existing insurance contracts of
9 the land management company. The standard crossing fee shall be
10 in lieu of any license, permit, application, plan review, or any
11 other fees or charges to reimburse the land management company
12 for the direct expenses incurred by the land management company
13 as a result of the crossing. The utility shall also reimburse
14 the land management company for any actual flagging expenses
15 associated with a crossing in addition to the standard crossing
16 fee. The railroad or railroad corporation has the right to halt
17 work at the crossing if the flagging does not meet the standards
18 of the railroad or railroad corporation. Nothing in this section
19 is intended to otherwise restrict or limit any authority or right
20 a utility may have to locate facilities at a crossing along a
21 state highway or any other public road or to otherwise enter upon
22 lands where authorized by law.

23 389.588. 1. Notwithstanding the provisions of section
24 389.586, nothing shall prevent a land management company and a
25 utility from otherwise negotiating the terms and conditions
26 applicable to a crossing or the resolution of any disputes
27 relating to the crossing so long as they do not interfere with
28 the rights of a railroad or railroad corporation. No agreement

1 between a land management company and a utility shall affect the
2 rights, interests or operations of a railroad or railroad
3 corporation.

4 2. Notwithstanding subsection 1 of this section, the
5 provisions of this section shall not impair the authority of a
6 utility to secure crossing rights by easement pursuant to the
7 exercise of the power of eminent domain.

8 389.589. 1. If the parties cannot agree that special
9 circumstances exist, the dispute shall be submitted to binding
10 arbitration.

11 2. Either party may give written notice to the other party
12 of the commencement of a binding arbitration proceeding in
13 accordance with the commercial rules of arbitration in the
14 American Arbitration Association. Any decision by the board of
15 arbitration shall be final, binding and conclusive as to the
16 parties. Nothing provided in this section shall prevent either
17 party from submission of disputes to the courts. Land management
18 companies and utilities may seek enforcement of sections 389.586
19 through 389.591 in a court of proper jurisdiction and shall be
20 entitled to reasonable attorney fees if they prevail.

21 3. If the dispute over special circumstances concerns only
22 the compensation associated with a crossing, then the utility may
23 proceed with installation of the crossing during the pendency of
24 the arbitration.

25 389.591. 1. Notwithstanding any provision of law to the
26 contrary, sections 389.585 to 389.591 shall apply in all
27 crossings of land management corridors involving a land
28 management company and a utility and shall govern in the event of

1 any conflict with any other provision of law, except that
2 sections 389.585 to 389.591 shall not override or nullify the
3 condemnation laws of this state nor confer the power of eminent
4 domain on any entity not granted such power prior to August 28,
5 2013.

6 2. The provisions of sections 389.585 to 389.591 shall
7 apply to a crossing commenced after August 28, 2013. These
8 provisions shall also apply to a crossing commenced before August
9 28, 2013, but only upon the expiration or termination of the
10 agreement for such crossing.

11 392.415. 1. Upon request, a telecommunications carrier or
12 commercial mobile service provider as identified in 47 U.S.C.
13 Section 332(d)(1) and 47 CFR Parts 22 or 24 shall provide call
14 location information concerning the user of a telecommunications
15 service or a wireless communications service, in an emergency
16 situation, to a law enforcement official or agency in order to
17 respond to a call for emergency service by a subscriber,
18 customer, or user of such service, or to provide caller location
19 information (or do a ping locate) in an emergency situation that
20 involves danger of death or serious physical injury to any person
21 where disclosure of communications relating to the emergency is
22 required without delay.

23 2. No cause of action shall lie in any court of law against
24 any telecommunications carrier or telecommunications service or
25 commercial mobile service provider, or [against any
26 telecommunications service or wireless communications] other
27 provider of communications-related service, or its officers,
28 employees, agents, or other specified persons, for providing any

1 information, facilities, or assistance to a law enforcement
2 official or agency [in accordance with the terms of this section]
3 in response to requests made under the circumstances of
4 subsection 1 of this section or for providing such information,
5 facilities, or assistance through any plan or system required by
6 sections 190.300 to 190.340. Notwithstanding any other provision
7 of law, nothing in this section prohibits a telecommunications
8 carrier, [or] commercial mobile service provider, or other
9 provider of communications-related service from establishing
10 protocols by which such carrier or provider could voluntarily
11 disclose call location information.

12 392.420. The commission is authorized, in connection with
13 the issuance or modification of a certificate of interexchange or
14 local exchange service authority or the modification of a
15 certificate of public convenience and necessity for interexchange
16 or local exchange telecommunications service, to entertain a
17 petition to suspend or modify the application of its rules or the
18 application of any statutory provision contained in sections
19 392.200 to 392.340 if such waiver or modification is otherwise
20 consistent with the other provisions of sections 392.361 to
21 392.520 and the purposes of this chapter. In the case of an
22 application for certificate of service authority to provide basic
23 local telecommunications service filed by an alternative local
24 exchange telecommunications company, and for all existing
25 alternative local exchange telecommunications companies, the
26 commission shall waive, at a minimum, the application and
27 enforcement of its quality of service and billing standards
28 rules, as well as the provisions of subsection 2 of section

1 392.210, subsection 1 of section 392.240, subsections 1 and 4 of
2 section 392.245, and sections 392.270, 392.280, 392.290, 392.300,
3 392.310, 392.320, 392.330, and 392.340. Notwithstanding any
4 other provision of law in this chapter and chapter 386, where an
5 alternative local exchange telecommunications company is
6 authorized to provide local exchange telecommunications services
7 in an incumbent local exchange telecommunications company's
8 authorized service area, the incumbent local exchange
9 telecommunications company may opt into all or some of the
10 above-listed statutory and commission rule waivers by filing a
11 notice of election with the commission that specifies which
12 waivers are elected. In addition, where an interconnected voice
13 over internet protocol service provider is registered to provide
14 service in an incumbent local exchange telecommunications
15 company's authorized service area under section 392.550, the
16 incumbent local exchange telecommunications company may opt into
17 all or some of the above-listed statutory and commission rule
18 waivers by filing a notice of election with the commission that
19 specifies which waivers are elected. The commission may reimpose
20 its quality of service and billing standards rules, as
21 applicable, on an incumbent local exchange telecommunications
22 company but not on a company-granted competitive status under
23 subdivision (7) of subsection 5 of section 392.245 in an exchange
24 where there is no alternative local exchange telecommunications
25 company or interconnected voice over internet protocol service
26 provider that is certificated or registered to provide local
27 voice service only upon a finding, following formal notice and
28 hearing, that the incumbent local exchange telecommunications

1 company has engaged in a pattern or practice of inadequate
2 service. Prior to formal notice and hearing, the commission
3 shall notify the incumbent local exchange telecommunications
4 company of any deficiencies and provide such company an
5 opportunity to remedy such deficiencies in a reasonable amount of
6 time, but not less than sixty days. Should the incumbent local
7 exchange telecommunications company remedy such deficiencies
8 within a reasonable amount of time, the commission shall not
9 reimpose its quality of service or billing standards on such
10 company.

11 392.461. A telecommunications company may, upon written
12 notice to the commission, elect to be exempt from certain retail
13 rules relating to:

14 (1) The provision of telecommunications service to retail
15 customers and established by the commission which include
16 provisions already mandated by the Federal Communications
17 Commission, including but not limited to federal rules regarding
18 customer proprietary network information, verification of orders
19 for changing telecommunications service providers (slamming),
20 submission or inclusion of charges on customer bills (cramming);
21 or

22 (2) The installation, provisioning, or termination of
23 retail service.

24
25 Notwithstanding any other provision of this section, a
26 telecommunications company shall not be exempt from any
27 commission rule established under authority delegated to the
28 state commission pursuant to federal statute, rule or order,

1 including but not limited to universal service funds, number
2 pooling and conservation efforts, or any authority delegated to
3 the state commission to facilitate or enforce any interconnection
4 obligation or other intercarrier issue, including but not limited
5 to, intercarrier compensation, network configuration or other
6 such matters. Notwithstanding other provisions of this chapter
7 or chapter 386, a telecommunications company may, upon written
8 notice to the commission, elect to be exempt from any requirement
9 to file or maintain with the commission any tariff or schedule of
10 rates, rentals, charges, privileges, facilities, rules,
11 regulations, or forms of contract, whether in whole or in part,
12 for telecommunications services offered or provided to
13 residential or business retail end user customers and instead
14 shall publish generally available retail prices for those
15 services available to the public by posting such prices on a
16 publicly accessible website. A telecommunications company may
17 include in a tariff filed with the commission any, all, or none
18 of the rates, terms, or conditions for any, all, or none of its
19 retail telecommunications services. Nothing in this section
20 shall affect the rights and obligations of any entity, including
21 the commission, established pursuant to federal law, including 47
22 U.S.C. Sections 251 and 252, any state law, rule, regulation, or
23 order related to wholesale rights and obligations, or any tariff
24 or schedule that is filed with and maintained by the commission.
25 392.611. 1. A telecommunications company certified under
26 this chapter or holding a state charter authorizing it to engage
27 in the telephone business shall not be subject to any statute in
28 chapter 386 or this chapter (nor any rule promulgated or order

1 issued under such chapters) that imposes duties, obligations,
2 conditions, or regulations on retail telecommunications services
3 provided to end user customers, except to the extent it elects to
4 remain subject to certain statutes, rules, or orders by
5 notification to the commission. Telecommunications companies
6 shall remain subject to general, nontelecommunications-specific
7 statutory provisions other than those in chapters 386 and this
8 chapter to the extent applicable. Telecommunications companies
9 shall:

10 (1) Collect from their end users the universal service fund
11 surcharge in the same competitively neutral manner as other
12 telecommunications companies and interconnected voice over
13 internet protocol service providers, remit such collected
14 surcharge to the universal service fund administrator, and
15 receive, as appropriate, funds disbursed from the universal
16 service fund, which may be used to support the provision of local
17 voice service;

18 (2) Report to the commission such intrastate
19 telecommunications service revenues as are necessary to calculate
20 the commission assessment, universal service fund surcharge, and
21 telecommunications programs under section 209.255; and

22 (3) Continue to comply with the provisions of section
23 392.415 pertaining to the provision of location information in
24 emergency situations.

25 2. Broadband and other Internet protocol-enabled services
26 shall not be subject to regulation under chapter 386 or this
27 chapter, except that interconnected voice over Internet protocol
28 service shall continue to be subject to section 392.550. Nothing

1 in this subsection extends, modifies, or restricts the provisions
2 of subsection 3 of section 392.611. As used in this subsection,
3 "other internet protocol-enabled services" means any services,
4 capabilities, functionalities, or applications using existing
5 internet protocol, or any successor internet protocol, that
6 enable an end user to send or receive a communication in existing
7 internet protocol format, or any successor internet protocol
8 format, regardless of whether the communication is voice, data,
9 or video.

10 3. Notwithstanding any other provision of this section, a
11 telecommunications company shall not be exempt from any
12 commission rule established under authority delegated to the
13 state commission under federal statute, rule, or order, including
14 but not limited to universal service funds, number pooling, and
15 conservation efforts. Notwithstanding any other provision of
16 this section, nothing in this section extends, modifies, or
17 restricts any authority delegated to the state commission under
18 federal statute, rule, or order to require, facilitate, or
19 enforce any interconnection obligation or other intercarrier
20 issue including, but not limited to, intercarrier compensation,
21 network configuration or other such matters. Notwithstanding any
22 other provision of this section, nothing in this section extends,
23 modifies, or restricts any authority the commission may have
24 arising under state law relating to interconnection obligations
25 or other intercarrier issue including, but not limited to,
26 intercarrier compensation, network configuration, or other such
27 matters.

28 4. After August 28, 2013, telecommunications companies

1 seeking to provide telecommunications service may, in lieu of the
2 process and requirements for certification set out in other
3 sections, elect to obtain certification by following the same
4 registration process set out in subsection 3 of section 392.550,
5 substituting telecommunications service for interconnected voice
6 over internet protocol service in the requirements specified in
7 subdivisions (1) to (8) of subsection 3 of section 392.550.